

BEFORE THE  
DIVISION OF MEDICAL QUALITY  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation  
Against:

**DAN R. KIRKHAM, M.D.**  
Certificate No. G-11339

No: 04-2002-132605


\_\_\_\_\_  
Respondent

**DECISION**

The attached Proposed Decision is hereby adopted by the Division of Medical Quality as its  
Decision in the above-entitled matter.

This Decision shall become effective at 5:00 p.m. on February 25, 2005.

IT IS SO ORDERED January 26, 2005.

By:   
**RONALD L. MOY, M.D.**  
Chair - Panel B  
Division of Medical Quality

BEFORE THE  
DIVISION OF MEDICAL QUALITY  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

DAN R. KIRKHAM, M.D.

Physician and Surgeon's Certificate No.:  
G11339,

Respondent.

Case No. 04-2002-132605

OAH No. L2003070654

**PROPOSED DECISION**

Ralph B. Dash, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on December 15, 2004, at Los Angeles, California.

Aleksandra C. Sachowicz, Deputy Attorney General, represented Complainant.

Respondent Dan R. Kirkham, M. D. represented himself.

Oral and documentary evidence having been received and the matter submitted, the Administrative Law Judge makes the following Proposed Decision.

\* \* \* \* \*

**FINDINGS OF FACT**

1. Ron Joseph made the Accusation in his official capacity as the Executive Director of the Medical Board of California (Board).

2. On October 19, 1965, the Board issued Physician and Surgeon's Certificate Number G11339 to Respondent Dan R. Kirkham, M.D. (Respondent). At all times pertinent hereto, said Certificate was, and is now, in full force and effect.

3. On June 7, 2002, in the United States District Court, District of Oregon, Respondent was convicted, after trial by jury, of one count of violating 18 United States Code, section 371, conspiracy to defraud the United States, and one count of violating 26

United States Code, section 7201, attempting to evade and defeat payment of taxes, both of which are felonies that are substantially related to the functions, duties and qualifications of a Board licensee. Respondent was committed to the custody of the United States Bureau of Prisons for a period of 30 months as to each count, the sentences to run concurrently. After release from imprisonment, Respondent will be on supervised release for a period of three years.

Respondent has not yet served his sentence. Execution of sentence was stayed pending appeal. All of Respondent's appeals have now been exhausted and the convictions and sentence affirmed. Respondent is due to begin serving his sentence within the next 90 days.

4. Respondent was found guilty of committing the acts charged in the indictment. Respondent is a California attorney, who has been on inactive status since 1999. Respondent was part of a conspiracy to defraud the federal government out of income taxes. He joined a group called "Christian Patriot Association" (CPA) which operated a "warehouse" bank designed to enable customers to conduct anonymous banking transactions and conceal income and assets from the Internal Revenue Service. CPA commingled the deposits of over 900 customers from across the United States in commercial bank accounts with no connection to any individual customer. CPA would pay bills by writing checks drawn on these bank accounts as directed by their customers. CPA would also mail cash withdrawn from these accounts as directed.

Respondent was a customer of CPA, using the alias "Rex Ro." He did not file federal tax returns for 1992 through 1999. He used CPA to conceal his identity and ownership of assets. Between March 9, 1995 and October 2, 1996, CPA sent Respondent 28 packets of cash totaling \$676,000, none of which it reported to the IRS. In 1997, the IRS served a notice of levy on CPA showing a total amount due from Respondent of \$777,094.22. CPA sent the IRS a check for \$7.39 from Respondent's account to settle the levy.

Respondent's debt to the IRS was based on his failure to pay income and self-employment taxes. In 1993, Respondent informed the IRS that he had no tax liability because he had not received any income from sources within the United States, and he was not a citizen of the United States, both statements being false. In addition, Respondent used a false social security number with respect to at least one entity which paid him income.

Respondent offered no explanation for his conduct, nor did he present any evidence of mitigation or rehabilitation.

5. The Board reasonably incurred costs of investigation and prosecution of this matter, including fees of the Attorney General, in the total sum of \$2,637.31.

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\* \* \* \* \*

## CONCLUSIONS OF LAW

1. Respondent is subject to disciplinary action under Business and Professions Code Section 2236, subdivision (a), based on his convictions for the crimes set forth in Finding 3, crimes that are substantially related to the functions, duties and qualifications of a Board licensee. In this regard, the following, taken from *Krain v. Medical Board* (1999) 71 Cal. App. 4th 1416, commencing at page 1424, is instructive:

Krain contends that his conviction for solicitation of subornation of perjury does not bear a substantial relationship to his qualifications as a physician. Based on *Windham v. Board of Medical Quality Assurance* (1980) 104 Cal. App. 3d 461 [163 Cal. Rptr. 566] (*Windham*), we reject Krain's contention. In *Windham*, a physician was disciplined as a result of his conviction for tax fraud. In that case, the physician argued "that while tax fraud may adversely reflect on his moral character, it is not the type of transgression which reflects on his professional qualifications, functions or duties." (*Id.* at p. 470.) The Court of Appeal rejected this argument: "First of all, we find it difficult to compartmentalize dishonesty in such a way that a person who is willing to cheat his government out of \$ 65,000 in taxes may yet be considered honest in his dealings with his patients. In this connection, however, we should point out that today's doctor deals financially with the government--state, local and federal--in many ways that have nothing to do with his own personal tax obligation. . . . Above all, however, there is the relation between doctor and patient. It is unnecessary to describe the extent to which that particular relationship is based on utmost trust and confidence in the doctor's honesty and integrity." (*Windham, supra*, 104 Cal. App. 3d at p. 470, 163 Cal. Rptr. 566.)

Krain's conviction for soliciting the subornation of perjury, like the tax fraud conviction at issue in *Windham*, involves dishonesty. We agree with the reasoning of *Windham*: the intentional solicitation to commit a crime which has as its hallmark an act of dishonesty cannot be divorced from the obligation of utmost honesty and integrity to the patients whom the physician counsels, as well as numerous third party entities and payors who act on behalf of patients. (*Windham, supra*, 104 Cal. App. 3d at p. 470; see also *Matanky v. Board of Medical*

Examiners (1978) 79 Cal. App. 3d 293, 305-306 [144 Cal. Rptr. 826].) Krain's plea of guilty to solicitation of subornation of perjury is substantially related to his qualifications as a physician.

2. Respondent's conduct, as set forth in Finding 4, constitutes acts of dishonesty and corruption within the meaning of Business and Professions Code section 2234, subdivision (e).

3. The Board is entitled to recover from Respondent the sum of \$2,637.31 as and for its cost of investigation and prosecution of this matter, under the provisions of Business and Professions Code section 125.3, by reason of Finding 5.

\* \* \* \* \*

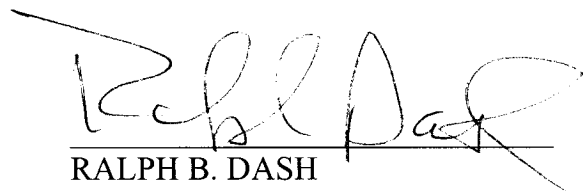
### **ORDER**

WHEREFORE, THE FOLLOWING ORDER is hereby made:

1. Physician and Surgeon's Certificate Number G 11339 issued to Respondent Dan. R. Kirkham, together with all licensing rights appurtenant thereto, is revoked.

2. Respondent Dan R. Kirkham shall pay to the Board the sum of \$2,637.31 at such time and in such manner as the Board may, in its discretion, direct.

Date: 12-28-04

A handwritten signature in black ink, appearing to read "Ralph B. Dash", written over a horizontal line.

RALPH B. DASH  
Administrative Law Judge  
Office of Administrative Hearings

FILED  
STATE OF CALIFORNIA  
MEDICAL BOARD OF CALIFORNIA  
SACRAMENTO January 21, 2003  
BY Samuel E. Mosher

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Attorneys for Complainant

BEFORE THE  
DIVISION OF MEDICAL QUALITY  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 04-2002-132605

DAN R. KIRKHAM, M.D.  
17220 Newhope, #293  
Fountain Valley, CA 92708

ACCUSATION

Physician and Surgeon's Certificate No. G11339  
Respondent.

Complainant alleges:

PARTIES

1. Ron Joseph (Complainant) brings this Accusation solely in his official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs.
2. On or about October 19, 1965, the Medical Board of California (Board) issued Physician and Surgeon's Certificate Number G11339 to Dan R. Kirkham, M.D. (Respondent). The Physician and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and expired on December 31, 2002. Respondent's current license status is retired.

JURISDICTION

3. This Accusation is brought before the Board's Division of Medical Quality (Division) under the authority of the below mentioned statutes and regulations.<sup>1</sup>

4. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Division deems proper.

5. Section 2234 of the Code states:

"The Division of Medical Quality shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this chapter [Chapter 5, the Medical Practice Act].

"(b) Gross negligence.

"(c) Repeated negligent acts.

"(d) Incompetence.

"(e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

"(f) Any action or conduct which would have warranted the denial of a certificate."

"..."

6. Section 2236 of the Code states, in pertinent part:

"(a) The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within

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1. All statutory references are to the Business and Professions Code (Code) unless otherwise indicated.

1 the meaning of this chapter [Chapter 5, the Medical Practice Act]. The record of  
2 conviction shall be conclusive evidence only of the fact that the conviction occurred.

3 “....”

4 7. Section 14124.12 of the Welfare and Institutions Code states, in pertinent  
5 part:

6 “(a) Upon receipt of written notice from the Medical Board of California, the  
7 Osteopathic Medical Board of California, or the Board of Dental Examiners of California,  
8 that a licensee's license has been placed on probation as a result of a disciplinary action,  
9 the department may not reimburse any Medi-Cal claim for the type of surgical service or  
10 invasive procedure that gave rise to the probation, including any dental surgery or  
11 invasive procedure, that was performed by the licensee on or after the effective date of  
12 probation and until the termination of all probationary terms and conditions or until the  
13 probationary period has ended, whichever occurs first. This section shall apply except in  
14 any case in which the relevant licensing board determines that compelling circumstances  
15 warrant the continued reimbursement during the probationary period of any Medi-Cal  
16 claim, including any claim for dental services, as so described. In such a case, the  
17 department shall continue to reimburse the licensee for all procedures, except for those  
18 invasive or surgical procedures for which the licensee was placed on probation.”

19 8. Section 125.3 of the Code provides, in pertinent part, that the Division  
20 may request the administrative law judge to direct a licensee found to have committed a  
21 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the  
22 investigation and enforcement of the case.

23 FIRST CAUSE FOR DISCIPLINE

24 (Conviction of a Crime)

25 9. Respondent is subject to disciplinary action under section 2236, subsection  
26 (a), of the Code in that he was convicted of a crime substantially related to the qualifications,  
27 functions, or duties of a physician and surgeon. The circumstances are as follows:

28 10. On or about June 7, 2002, in a federal criminal proceeding entitled *United*



1 *States v. Richard G. Flowers, et al*, in the United States District Court, District of Oregon, Case  
2 Number CR 00-539 KI, Respondent was found guilty and convicted, after a trial by jury, of one  
3 count of violating 18 U.S.C. Section 371, Conspiracy to Defraud the United States, a felony. On  
4 the same date in the same matter, Respondent was also found guilty and convicted of one count  
5 of violating 26 U.S.C. Section 7201, Attempting to Evade and Defeat Payment of Tax, a felony.  
6 According to the grand jury indictment, the circumstances of the offenses are as follows.

7           11. From about March 1986 and continuing until about July 2002, several  
8 other defendants and Respondent conspired to defraud the United States government and, in  
9 particular, the Internal Revenue Service (IRS), by impeding, impairing, obstructing, and  
10 defeating, through deceitful and dishonest means, the lawful functions of the IRS in ascertaining,  
11 computing, assessing, and collecting taxes. The conspiracy was centered on an organization  
12 known as the Christian Patriot Association (CPA), which operated a “warehouse” bank in a  
13 scheme designed to enable customers to conduct anonymous banking transactions and conceal  
14 income and assets from the IRS. For a fee, CPA commingled the deposits of over nine hundred  
15 customers nationwide in commercial bank accounts with no connection to any individual  
16 customer. As directed by CPA customers, CPA paid bills by writing checks drawn on these  
17 accounts, mailed cash withdrawn from these accounts to customers, purchased and sold precious  
18 metals, published a monthly newsletter, and provided access to private mailboxes and a mail  
19 forwarding service.

20           12. Respondent, a California resident and United States citizen, was a CPA  
21 customer and used the alias of “Rex Ro.” In addition to being a licensed medical doctor,  
22 Respondent was a licensed attorney in California, doing business under his own name and under  
23 various business names. Respondent also worked as a sales representative. Respondent failed to  
24 file federal income tax returns for tax years 1992, 1993, 1994, 1995, 1996, 1997, 1998, and 1999.

25           12. From about June 10, 1993, until about October 27, 1997, Respondent  
26 attempted to evade and defeat the payment of a large part of the income and self-employment  
27 taxes, interest, and penalties due and owing by him to the United States for the years 1991, 1992,  
28 and 1993, in the amount of approximately \$693,814. Respondent did this by failing to pay his

1 income and self-employment tax liabilities for 1990, 1991, and 1992, and by several acts of  
2 evasion, as follows.

3           13.     Respondent responded to a May 20, 1993 letter from the IRS regarding his  
4 1990 and 1991 federal income taxes by falsely stating, in a letter dated June 10, 1993, that he had  
5 no tax liability because he had not received any income from any sources within the United  
6 States, and by falsely stating that he was not a citizen of the United States.

7           14.     From about November 1993 until at least October 1997, Respondent  
8 conducted financial transactions through the CPA warehouse bank services. During that period,  
9 Respondent closed his traditional bank account, checking and savings accounts, and personal  
10 checking account in California. In October 1993, Respondent opened a private mailbox in Tustin,  
11 California, and instructed the mailbox agent to accept mail for him under Respondent's own  
12 name and under his alias, "Rex Ro." Between about March 9, 1995, and about October 2, 1996,  
13 CPA sent twenty-eight packages of cash totaling approximately \$67,600, to Respondent at his  
14 private mailbox in Tustin. Between about October 31, 1996, and December 12, 1996, CPA sent  
15 three packages containing a total of approximately \$12,000 in cash to Respondent under his alias,  
16 "Rex Ro," at his private mailbox in Tustin.

17           15.     On or about January 15, 1997, the IRS served CPA a Notice of Levy  
18 showing a total amount due of \$777, 094.22 against Respondent's CPA account balance. On or  
19 about January 23, 1997, CPA acknowledged receipt of the levy, and on or about February 12,  
20 1997, CPA sent a check for \$7.39 to the IRS, an amount substantially less than Respondent's  
21 CPA account balance on that date.

## 22                                   SECOND CAUSE FOR DISCIPLINE

23                                   (Dishonesty or Corruption)

24           16.     Respondent is subject to disciplinary action under section 2234, subsection  
25 (e), in that he committed acts of dishonesty and/or corruption in his roles as a co-conspirator and  
26 tax evader in Case No. CR 00-539 KI. The circumstances are as follows:

27           17.     Paragraphs 10 through 15 are incorporated by reference as if set forth in  
28 full.

1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
3 alleged, and that following the hearing, the Division of Medical Quality issue a decision:

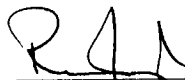
4 1. Revoking or suspending Physician and Surgeon's Certificate Number  
5 G11339, issued to Dan R. Kirkham, M.D.;

6 2. Revoking, suspending or denying approval of Dan R. Kirkham, M.D.'s  
7 authority to supervise physician's assistants, pursuant to section 3527 of the Code;

8 3. Ordering Dan R. Kirkham, M.D. to pay the Division of Medical Quality  
9 the reasonable costs of the investigation and enforcement of this case, and, if placed on  
10 probation, the costs of probation monitoring;

11  
12 4. Taking such other and further action as deemed necessary and proper.

13 DATED: January 21, 2003

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15 

16 \_\_\_\_\_  
17 RON JOSEPH  
18 Executive Director  
19 Medical Board of California  
20 Department of Consumer Affairs  
21 State of California  
22 Complainant

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